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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:	
THE BERRY'S CREEK STUDY AREA	
	U.S. EPA Index No. II-CERCLA-2008-2011
RESPONDENTS listed on Appendix A.	
Proceeding Under Sections 104, 107, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (42 U.S.C. §§ 9604, 9607, 9622(a), 9622(d)(3)).	

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION AND FEASIBILITY STUDY BERRY'S CREEK STUDY AREA

TABLE OF CONTENTS

I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondents listed in Appendix A ("Respondents"). The Settlement Agreement concerns the preparation of, performance of, and reimbursement for costs incurred by EPA in connection with a Remedial Investigation and Feasibility Study ("RI/FS") at the Berry's Creek Study Area ("Site") located in the Boroughs of Carlstadt, East Rutherford, Moonachie, Rutherford, Teterboro and Woodridge, Bergen County, New Jersey.

II. JURISDICTION

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9607, and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was redelegated by the Regional Administrator of EPA Region II to the Director of the Emergency and Remedial Response Division by EPA Regional Delegations 14-14-C and 14-14-D dated November 23, 2004.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the U.S. Department of Commerce and the U.S. Fish and Wildlife Service of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in

Section VI of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms in any action to enforce its provisions.

5. Consistent with EPA guidance and standard practice, EPA intends to identify and take measures to obtain the participation of additional parties as the RI/FS proceeds. Such measures may include taking enforcement actions pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and § 9607(a). This does not alter the Respondents' obligations to perform the Work under this Settlement Agreement. EPA and Respondents agree to cooperate in the identification of additional parties and in obtaining their participation in this Settlement Agreement. EPA and Respondents acknowledge that this Settlement Agreement may be amended, upon mutually acceptable terms and conditions, to include additional parties who elect to become Respondents after this Settlement Agreement becomes effective.

III. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

7. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

8. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

9. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the

terms and conditions of this Settlement Agreement and to execute and legally bind the Respondent he or she represents to this document.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

B. "Contractor" shall mean the company, companies or individuals retained by Respondents to perform any of the Work required by this Settlement Agreement.

C. "Day" shall mean a calendar day unless otherwise expressly stated. "Working Day" shall mean a day consisting of hours 8 a.m. to 6 p.m., other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next Working Day.

D. "Designated Project Coordinator" shall mean the person designated by Respondents who shall be charged with the duty of being knowledgeable of the performance of all work being performed by Respondents pursuant to this Settlement Agreement.

E. "EPA" or "Agency" shall mean the United States Environmental Protection Agency and any successor department or agency of the United States.

F. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing or enforcing this Settlement Agreement, including but not limited

to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 54 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and Paragraph 40 (emergency response), and Paragraph 84 (Work Takeover).

G. "Hazardous substances" shall mean any substance (or mixture containing any hazardous substance) that falls within the definition of a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

H. "Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

I. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

J. "NJDEP" shall mean the New Jersey Department of Environmental Protection.

K. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

L. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

M. "Parties" shall mean the United States Environmental Protection Agency and Respondents.

N. "Respondents" shall mean signatories to this Settlement Agreement other than EPA as listed in Appendix A, as amended from time to time.

O. "Scoping Activity" or "Scoping Activities" shall mean the activities described in the Scoping Activities Work Plan attached to the Administrative Settlement Agreement and Order on Consent for the Berry's Creek Study Area that was signed by EPA on July 2, 2007 (U.S. EPA Index No. II-CERCLA-2007-2006).

P. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

Q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent (including any amendments hereto pursuant to Section XXX), all appendices attached hereto (listed in Section XXVIII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

R. "Site" shall mean the Berry's Creek Study Area, which is comprised of the water body known as Berry's Creek, including the Berry's Creek Canal and the natural course of Berry's Creek; all tributaries to Berry's Creek from its headwaters to the Hackensack River; and wetlands that are hydrologically connected to Berry's Creek or its tributaries, all located in the Boroughs of Rutherford, East Rutherford, Carlstadt, Wood Ridge, Moonachie, and Teterboro in Bergen County, New Jersey, as depicted generally on the map attached as Appendix C, and any areas where contamination from the Study Area has come to be located.

S. "Statement of Work" or "SOW" shall mean the Statement of Work for performance of a RI/FS for the Site, as set forth in Appendix B to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

T. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); provided, however, that "Waste Material" does not include any environmental samples taken in the course of the Work.

U. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XV (Retention of Records).

V. STATEMENT OF PURPOSE

11. In entering into this Settlement Agreement, the objectives of EPA and Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a Remedial Investigation ("RI") as more specifically set forth in the Statement of Work attached as Appendix B to this Settlement Agreement; (b) to identify and evaluate remedial alternatives to prevent, mitigate or otherwise respond to or remedy a release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study ("FS") in conjunction with the RI as more specifically set forth in the SOW; (c) to recover Future Response Costs incurred by EPA with respect to this Settlement Agreement; and (d) to resolve potential liabilities of Respondents for the Work and Future Response Costs as provided in this Settlement Agreement.

12. The Work conducted under this Settlement Agreement is subject to approval by EPA, and Respondents shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), as provided more specifically in the SOW. Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures as provided herein and in the SOW.

VI. EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The Berry's Creek Study Area (hereinafter referred to as the "Site") is located in Bergen County and traverses the Boroughs of Rutherford, East Rutherford, Carlstadt, Wood Ridge, Moonachie, and Teterboro. Berry's Creek is a tidal tributary of the Hackensack River. The Berry's Creek watershed encompasses approximately 12 square miles of wetlands inside the Hackensack River watershed.

14. For administrative purposes, EPA has designated the Site as Operable Unit 2 of the Ventron/Velsicol Superfund Site. In 1982 the Ventron/Velsicol Site was proposed for inclusion on the National Priorities List ("NPL"). On September 1, 1983 the Ventron/Velsicol Site was formally placed on the NPL, with NJDEP designated as the lead agency for directing the investigation and cleanup of the Ventron/Velsicol Site..

15. The Site contains other industrial, commercial and institutional facilities that manufactured, processed or used chemical products containing hazardous substances that may have been released, directly or indirectly, to Berry's Creek.

16. Surface water, groundwater, sediment, and/or soil contaminants found at the Site include, but are not limited to, arsenic, bis(2-ethylhexyl) phthalate, butyl benzyl phthalate, cadmium, chlorobenzene, chloroform, chromium, copper, cyanide, dichlorobenzene, di-n-butyl phthalate, 1,2-dichlorobenzene, 1,2-dichloroethane, dieldrin, di-n-octyl phthalate, ethylbenzene, lead, mercury, methylene chloride, methyl ethyl ketone, naphthalene, nickel, petroleum hydrocarbons, phenanthrene, phenol, polychlorinated biphenyls, pyrene, selenium, silver, tetrachloroethylene, thallium, toluene, 1,2-trans dichloroethylene, 1,1,1-trichloroethane, trichloroethylene, xylene, and zinc.

17. In 2001 EPA assumed lead agency responsibility for the Site.

18. Exposure to the various hazardous substances present at the Site by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects.

19. The continuing release(s) of hazardous substances present at the Site may continue to impact the Berry's Creek and

Hackensack River watersheds, the environment, and surrounding residents and businesses.

20. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Wastes and constituents thereof at the Site, sent to the Site, disposed of at the Site, and/or transported to the Site identified in Paragraphs 15 and 16 are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

22. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. Respondents are "person[s]" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. Respondents are potentially responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Each Respondent is a person who owns or operates a facility within the area defined as the Site; at the time of disposal of hazardous substances owned or operated a facility located within the area defined as the Site at which such disposal occurred and from which there was a release or threatened release of a hazardous substance; arranged for disposal or treatment or transport for disposal or treatment of hazardous substances at the Site; or accepted hazardous substances for transport to a disposal or treatment facility selected by such person at the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

25. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

26. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

VII. NOTICE

27. EPA has notified the State of New Jersey ("State") that this Settlement Agreement is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action at the Site required by the Settlement Agreement.

VIII. SETTLEMENT AGREEMENT

28. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

IX. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

29. Selection of Contractors, Personnel. All Work performed by Respondents under this Settlement Agreement shall be under the direction and supervision of qualified personnel. EPA agrees that Environmental Liability Management, Inc. ("ELM") is qualified to undertake or supervise the activities under the Statement of Work. At least 30 days before another contractor, subcontractor, or laboratory is anticipated to begin a particular activity described in the Statement of Work, Respondents shall notify EPA in writing of the names, titles, and qualifications of the key personnel at the contractor, subcontractor, or laboratory to be used. With respect to any proposed contractor that will be collecting or analyzing environmental samples, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP

should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the key personnel undertaking the Work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any key personnel's technical qualifications, Respondents shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacement's technical qualifications, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify EPA in writing of any changes or additions in the key personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

30. Respondents have designated Peter Brussock of ELM as their Designated Project Coordinator, who shall be responsible for administration of all response actions by Respondents required by this Settlement Agreement. As reasonably necessary or appropriate, the Designated Project Coordinator or his/her designee shall be present on Site or readily available when Work is occurring at the Site. Respondents shall have the right to change their designated Project Coordinator, subject to EPA's right to disapprove in writing. Respondents shall notify EPA 14 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondents' Designated Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondents.

31. EPA has designated Douglas Tomchuk of the New Jersey Remediation Branch, Region II, as its Project Coordinator. EPA will promptly notify Respondents of a change of its designated Project Coordinator. Except as otherwise provided in this Settlement Agreement, Respondents shall send all submissions required by this Settlement Agreement by electronic mail, certified mail, return receipt requested, or by UPS or Federal Express, to the EPA Project Coordinator at:

Douglas Tomchuk
U.S. Environmental Protection Agency,
Region II
290 Broadway, 19th Floor
New York, New York 10007-1866
E-mail: Tomchuk.Doug@epa.gov

Respondents shall submit in electronic form all portions of any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement. Respondents shall submit 4 hard copies to EPA and 3 hard copies to the State of each deliverable listed in the SOW.

32. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority, to be exercised consistent with the NCP, to halt any Work required by this Settlement Agreement and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

33. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan.

X. WORK TO BE PERFORMED

34. Respondents shall conduct the RI/FS for the Site in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990 or subsequently issued guidance), and guidance referenced therein, and guidance referenced in the SOW, as such guidance may be amended or

modified by EPA. The RI shall consist of analyzing and incorporating data from the Scoping Activities; collecting additional data to characterize Site conditions; determining the nature and extent of the contamination at or from the Site, including the extent to which multiple past and present sources of contaminants (outfalls, non-point sources, sediments) may have affected the Berry's Creek watershed; assessing risk to human health and the environment; and conducting treatability testing as necessary to evaluate the potential performance and cost of any treatment technologies that are being considered. The FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP and relevant guidance, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and § 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The RI/FS Work Plan to be submitted by Respondents in accordance with the SOW shall contain a detailed project schedule for completion of the RI/FS.

35. Upon receipt of the draft FS Report, EPA may evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the durability, reliability and effectiveness of any proposed Institutional Controls.

36. Modification of the RI/FS Work Plan.

a. As information is developed during the Work, Respondents may propose modifications as appropriate to the SOW, RI/FS Work Plan, or other plans for EPA's consideration. If Respondents do so, they shall submit such proposed modifications to EPA for review and approval in accordance with Section XI (EPA Approval of Plans and Other Submissions). In addition, if at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the EPA Project

Coordinator within 30 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables. The EPA Project Coordinator may authorize minor field modifications to any plans, studies, designs, techniques, or procedures undertaken or utilized in performing the Work under this Settlement Agreement, as long as any such modifications are approved in writing (which may include e-mail) and are within the scope of and consistent with the SOW.

b. In the event of unanticipated or changed circumstances at the Site that may warrant changes in the RI/FS Work Plan, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall request in writing that Respondents modify, amend or supplement the RI/FS Work Plan in writing accordingly. Respondents shall implement the RI/FS Work Plan as modified, amended, or supplemented.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS. Subject to the Dispute Resolution provisions in Section XVI of this Settlement Agreement, Respondents agree to perform those response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines, in writing, that such actions are necessary for a complete RI/FS.

d. Respondents shall confirm their willingness to perform the additional Work in writing to EPA within 10 days of receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS

Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the additional Work itself at any point pursuant to Paragraph 84 (Work Takeover), to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site through mechanisms other than this Settlement Agreement. Respondents reserve the right to object to any such requirement.

37. Off-Site Shipment of Waste Material. a. Except as provided herein, Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Designated Project Coordinator. The requirements of this paragraph shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(1) Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped: (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Subparagraphs 37.a.(1) as soon as practicable after the need for out-of-state shipment of more than 10 cubic yards of Waste Material has been identified and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site

location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

38. Meetings. EPA and Respondents agree to implement a collaborative and cooperative approach to management of the RI/FS process, including the use of technical work groups as appropriate. Respondents shall (in person, or by telephone conference if approved by EPA's Project Coordinator) make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion, but are anticipated to occur at least monthly during early phases of the RI/FS.

39. Progress Reports. In addition to the deliverables set forth in this Settlement Agreement, Respondents shall provide to EPA monthly progress reports by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include all results of sampling and tests and all other data received by Respondents, in the manner provided in the SOW, unless the data has otherwise been made available to EPA, (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

40. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence resulting from the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all

appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Chief of the Central New Jersey Remediation Section of the Emergency and Remedial Response Division of EPA Region II) by telephone (212-637-4380) of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site caused by the Work, Respondents shall immediately notify the EPA Project Coordinator, the Chief of the Central New Jersey Remediation Section of the Emergency and Remedial Response Division of EPA Region II) by telephone (212-637-4380) and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, any reporting required under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

41. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall, in writing (which may be in electronic form such as e-mail): (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 30 days, except

where to do so would cause serious disruption to the Work or where previous submissions have been disapproved due to material defects.

42. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 41(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submittal or portion thereof, Respondents shall not thereafter alter or amend such submittal or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 41(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVII (Stipulated Penalties).

43. Resubmission of Plans.

a. Upon receipt of a notice of disapproval, Respondents shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVII, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission that is not dependent on the disapproved portion, unless otherwise directed by EPA in writing. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVII (Stipulated Penalties).

c. Respondents shall not proceed with any Work described in, or dependent upon EPA approval of, the following deliverables until receiving EPA approval for the pertinent deliverable: RI/FS Work Plan and Sampling and Analysis Plan (including the QAPP), Draft Phase 1 Site Characterization Report

and Work Plan Addendum for Phase 2 field work, Draft Phase 2 Site Characterization Report and Work Plan Addendum for Phase 3 field work, Draft Treatability Testing Work Plan and Sampling and Analysis Plan, and Draft Feasibility Study Report. While awaiting EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in the RI/FS Work Plan or as otherwise approved by EPA.

d. For all remaining deliverables not enumerated above in subparagraph 43.c., Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

44. If EPA disapproves a resubmitted plan, report or other item, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other item. Respondents shall implement any such plan, report, or item as corrected, modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XVI (Dispute Resolution).

45. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVII.

46. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

47. All plans, reports, and other items submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other item submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

48. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

XII. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

49. Quality Assurance. Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP"), and applicable guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

50. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, pursuant to this Settlement Agreement, shall be submitted to EPA in the next monthly progress report, or otherwise made available, as described in Paragraph 39 of

this Settlement Agreement. EPA will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall verbally notify EPA at least 14 days prior to conducting significant field events as described in the SOW, RI/FS Work Plan or sampling and analysis plan. However, for sampling events during storm flows or storm tides, Respondents shall verbally notify EPA as soon as practicable. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples shall be analyzed by the methods identified in the QAPP.

c. Circumstances permitting, EPA shall verbally notify Respondents at least 14 days prior to conducting significant field events relating to the Site, other than emergency response actions, activities conducted pursuant to Paragraph 84 (Work Takeover), or any enforcement-related events that require confidentiality. At Respondents' verbal or written request, EPA shall allow split or duplicate samples to be taken by Respondents (and their authorized representatives) of any samples collected in overseeing this Settlement Agreement or otherwise investigating the Site. All split samples shall be analyzed by the methods identified in the QAPP.

51. Access to Information.

a. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. If Respondents wish to withhold any documents or information on the basis of privilege, Respondents shall do so in accordance with Paragraph 51.c., below. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

c. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege against disclosure recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no final documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other information evidencing conditions at the Site.

52. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered or generated by EPA or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the

Settlement Agreement or any Sampling and Analysis Plans prepared by Respondents and approved by EPA in writing. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 30 days of the monthly progress report containing the data.

XIII. SITE ACCESS AND INSTITUTIONAL CONTROLS

53. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to oversight of this Settlement Agreement.

54. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 60 days after the Effective Date, or no fewer than 90 days before access to such property is needed pursuant to the Statement of Work, whichever is later, or as otherwise specified in writing by the EPA Project Coordinator. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access, unless: EPA has identified the property owner as a potentially responsible party under CERCLA in connection with the Study Area ("PRP"); or Respondents have requested in writing, with supporting evidence, that EPA identify the property owner as a PRP, only until EPA determines, in its sole discretion, not to identify the property owner as a PRP. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, EPA may either: (i) obtain access for Respondents or assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the obligation under the Settlement Agreement that requires the

access agreement in question. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XIX (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

55. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. COMPLIANCE WITH OTHER LAWS

56. Respondents shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site (as defined in the NCP), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVIII (Force Majeure) of this Settlement Agreement for any delay in performing the Work from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided that Respondents have made proper, timely and complete permit application(s). This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. RETENTION OF RECORDS

57. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that

relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. With respect to records and documents relating to performance of the Work, as an alternative to each Respondent maintaining such records and documents, the Respondents collectively may preserve and retain a single set of all non-identical copies of such records and documents (including records or documents in electronic form). Until 10 years after commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

58. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA unless a privilege is asserted. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege against disclosure recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no final documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

59. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XVI. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

61. If Respondents object to any EPA action or decision under this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 14 days of such action (unless a longer time period is provided in or pursuant to this Settlement Agreement), unless the objection(s) has/have been resolved informally. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended by mutual agreement of the parties. Such extension may be granted verbally but must be confirmed in writing.

62. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Strategic Integration Manager of the Emergency and Remedial Response Division, EPA Region II will issue a written decision, which shall be based on the administrative record of the dispute and shall be consistent with the terms and objectives of this Agreement. When feasible, Respondents shall be given an opportunity to meet with the Strategic Integration Manager before the decision on the dispute is made. The administrative record of the dispute shall be maintained by EPA and shall consist of all correspondence and material exchanged between EPA and Respondents during the dispute resolution process. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section, except where a failure to toll an obligation would necessarily render the dispute moot. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision,

whichever controls, and regardless of whether Respondents agree with the decision.

XVII. STIPULATED PENALTIES

63. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 64 to 67 for failure to comply with any of the requirements of this Settlement Agreement specified below, unless excused under Section XVIII (Force Majeure) or otherwise approved by EPA. "Compliance" by Respondents shall include completion of the Work under this Settlement Agreement or any activities contemplated under any RI/FS Work Plan or other plan approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

64. For the following major deliverables, stipulated penalties shall accrue in the amount of $2,000 per day, per violation, for the first fourteen (14) days of noncompliance; $3,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day of noncompliance; $5,000 per day, per violation, for all violations lasting beyond thirty (30) days:

a) An original and any revised RI/FS Work Plan;

b) An original and any revised RI/FS QAPP, or HSP;

c) An original and any revised Phase 2 Report;

d) An original and any revised Phase 3 Report;

e) An original and any revised Baseline Human Health Risk Assessment Report; and

f) An original and any revised Baseline Ecological Risk Assessment Report.

65. For the following interim deliverables, stipulated penalties shall accrue in the amount of $1,000 per day, per violation, for the first fourteen (14) days of noncompliance;

$2,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day of noncompliance; and $3,000 per day per violation for all violations lasting beyond thirty (30) days:

a) An original and any revised Phase 1 Report;

b) An original and any revised Identification of Candidate Technologies Memorandum;

c) An original and any revised Treatability Testing Statement of Work;

d) An original and any revised Treatability Testing Work Plan, if required;

e) An original and any revised Treatability Study QAPP and/or HSP;

f) An original and any revised Treatability Study Evaluation Report, if required;

g) An original and any revised Pathway Analysis Report;

h) Task VIII presentation and memorandum regarding Findings of RI, Remedial Action Objective, and Development and Preliminary Screening of Alternatives;

i) Presentation regarding the draft Phase 3 Report; and

j) Certificate of Insurance.

66. For the monthly progress reports, payments pursuant to Section XIX, deliverables required by the SOW not listed above, or any other violations of this Settlement Agreement not specified above, stipulated penalties shall accrue in the amount of $500 per day, per violation, for the first fourteen (14) days of noncompliance; $1,000 per day, per violation, for the fifteenth (15th) day through the thirtieth (30th) day; $2,000 per day, per violation, for all violations lasting beyond thirty (30) days.

67. In the event that EPA assumes performance of the Work pursuant to Paragraph 84 of Section XXI (Reservation of Rights by EPA), Respondents shall be liable for a stipulated penalty in the amount of $2,500,000. EPA agrees that any penalty assessed against Respondents under this Paragraph shall be reduced, if appropriate, by the percentage of Work completed by the Respondents. This Paragraph shall not apply to any EPA activities under Paragraph 54 in which EPA obtains access or performs Work because Respondents are unable to obtain access, provided Respondents have complied with the requirements of Paragraph 54.

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 16th day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the Strategic Integration Manager of the Emergency and remedial Response Division, EPA Region II, during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the Strategic Integration Manager issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

69. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the same and describe the noncompliance. In addition, EPA may send Respondents a written demand for the payment of stipulated penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

70. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution). All payments to EPA under this Section shall indicate that the payment is for stipulated

penalties, and shall be remitted via Electronic Funds Transfer ("EFT"), along with the following information, to EPA's Account as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Name of Party making payment
EPA Index Number: CERCLA 02-2008-2011
Site/Spill Identifier Number: 02C7
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

To ensure that a payment is properly recorded, a letter should be sent, within one week of the EFT, which references the date of the EFT, the payment amount, that the payment is for stipulated penalties, the name of the Site, the case Index number, and the name and address of the party making payment to the United States as specified in Paragraph 31 and also to:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Cincinnati Finance Center, MS: NWD
Cincinnati, Ohio 45268

or:

AcctsReceivable.CINWD@epa.gov

71. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

72. Penalties shall continue to accrue as provided in Paragraph 68 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

73. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid

balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70.

74. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXI (Reservation of Rights by EPA), Paragraph 84. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. FORCE MAJEURE

75. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within two (2) Working Days of when Respondents first knew that the event was likely to cause a delay. Within five (5) Working Days thereafter, Respondents shall provide to EPA in writing an explanation and description

of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

77. If EPA agrees that the delay or anticipated delay is attributable to *a force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will promptly notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will promptly notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XIX. PAYMENT OF RESPONSE COSTS

78. Payments of Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. EPA shall use the amount placed in the Berry's Creek Special Account prior to the Effective Date of this Settlement Agreement for such Future Response costs before sending a bill to Respondents for Future Response Costs, and shall expressly subtract such amount from the first bill sent to Respondents for Future Response Costs. On a periodic basis, EPA will send Respondents a bill requiring payment of such costs that includes a Superfund Cost Recovery Package Imaging and On-line System ("SCORPIOS") report for the direct and indirect costs incurred by EPA and its contractors.

Respondents shall make all payments within 60 days of receipt of each bill, except as otherwise provided in Paragraph 80 of this Settlement Agreement, by remitting the amount of those costs via EFT, along with the following information, to EPA's Account as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Name of Party making payment
EPA Index Number: CERCLA 02-2008-2011
Site/Spill Identifier Number: 02C7
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

To ensure that a payment is properly recorded, a letter should be sent, within one week of the EFT, which references the date of the EFT, the payment amount, that the payment is for response costs, the name of the Site, the case Index number, and the name and address of the party making payment to the United States as specified in Paragraph 31 and also sent to:

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Cincinnati Finance Center, MS: NWD
Cincinnati, Ohio 45268

or:

AcctsReceivable.CINWD@epa.gov

b. The total amount to be paid by Respondents pursuant to Subparagraph 78.a. shall be deposited in the Berry's Creek Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund upon completion of all response actions at or in connection with the Site.

79. If Respondents do not pay Future Response Costs within 60 days of Respondents' receipt of a bill under Paragraph 78, Respondents shall pay Interest on the unpaid balance of Future

Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVII. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 78.

80. Respondents may contest payment of any Future Response Costs under Paragraph 78 if they determine that EPA has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 60 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 78. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 Working Days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 78. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 78. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this

Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XX. COVENANT NOT TO SUE BY EPA

81. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XIX. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

82. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

83. The covenant not to sue set forth in Section XX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs and Future Response Costs;

c. liability for performance of response actions other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

84. Work Takeover.

a. In the event EPA determines that Respondents have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA will specify the grounds on which the notice was issued and provide Respondents a period of 21 days within which to remedy the circumstances giving rise to issuance of the notice.

b. If, after expiration of the 21-day notice period specified in Paragraph 84.a., Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 84.b.

c. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 84.b. until the earlier of (i) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have prompt access to and benefit of any performance guarantee(s) in an amount sufficient to fund the estimated costs of the remaining Work pursuant to Section XXVII of the Settlement Agreement, in accordance with the provisions of Paragraph 101 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and Respondents fail to remit a cash amount up to but not exceeding the amount needed to fund the estimated cost of the remaining Work, all in accordance with Paragraph 101, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Respondents shall pay in accordance with Section XIX (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANT NOT TO SUE BY RESPONDENTS

85. Except as specifically provided in Paragraph 85.d. below, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the New Jersey State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

d. This Covenant Not to Sue by Respondents shall not extend to, and Respondents specifically reserve: (1) any and all claims or causes of action under Section 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, against the United States as a "covered person" (within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)) with respect to the Work, Future Response Costs, and this Settlement Agreement, based solely on actions by the United States other than the exercise of the government's authority under CERCLA; and (2) any claims or causes of action under the Tucker Act, 28 U.S.C. § 1491, against the United States with respect to the Work, Future Response Costs, and this Settlement Agreement based solely on contracts that do not address or relate to the exercise of the government's authority under CERCLA.

86. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 83(b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

87. Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to

the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which waiver of sovereign immunity is found in a statute other than CERCLA.

88. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

89. Nothing in this Settlement Agreement shall be construed as a waiver by a Respondent of any right it may have to include costs incurred in implementation of this Settlement Agreement, the Work, Future Response Costs, or any other work at or in conjunction with the Site in its allowable costs for purposes of pricing under contracts with the United States, to the extent allowed by law, rule or regulation.

XXIII. OTHER CLAIMS

90. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents.

91. Except as expressly provided in Section XX (Covenant Not to Sue by EPA) and Section XXIV (Contribution), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

92. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial

review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION

93. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. Section 9613(f)(2) and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. Notwithstanding such protections against contribution actions or claims by non-parties to this Settlement Agreement, the Respondents agree that they may allocate or re-allocate any and all response costs incurred in connection with the Settlement Agreement among themselves, either consensually or through civil actions to the extent not otherwise precluded by agreement of the Respondents.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXV. INDEMNIFICATION

94. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all

claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

95. The United States shall give Respondents written notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

96. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site.

XXVI. INSURANCE

97. At least 30 days prior to commencing any On-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 5 million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such

insurance and, if requested, a copy of each insurance policy. Respondents shall submit such certificates and, if requested, copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. PERFORMANCE GUARANTEE

98. In order to ensure the full and final completion of the Work, Respondents shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $18,000,000.00 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. a policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance

policies in the State of New Jersey and (b) whose insurance operations are regulated and examined by the New Jersey Department of Banking and Insurance;

e. A demonstration by one or more Respondents that each such Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Respondent, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

99. a. Respondents have selected, and EPA has approved, as an initial Performance Guarantee, a trust fund pursuant to a Trust Agreement substantially in the form attached hereto as Appendix D. Within ninety (90) days after the Effective Date of this Settlement Agreement, Respondents shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the Trust Agreement attached hereto as Appendix D and submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to EPA's Project Coordinator, with a copy to EPA's Berry's Creek Study Area Attorney.

b. If at any time during the effective period of this Settlement Agreement, the Respondents provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 98(e) or Paragraph 98(f) above, Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Settlement Agreement, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial

officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XXVII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Settlement Agreement, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

100. In the event that EPA determines at any time that a Performance Guarantee provided by any Respondent pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Respondent becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 98 of this Settlement Agreement that satisfies all requirements set forth in this Section XXVII. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 102(b)(ii) of this Settlement Agreement. Respondents' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof.

101. The commencement of any Work Takeover pursuant to Paragraph 84 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 98.a., b., c., d., or f., and at

such time EPA shall have prompt access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 98.e., Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

102. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 98 above, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondents shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 102.b.(ii) of this Settlement Agreement. If EPA decides to accept such a proposal, EPA shall notify the petitioning Respondents of such decision in writing. After receiving EPA's written acceptance, Respondents may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondents may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No

change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 100 or 102.b. of this Settlement Agreement.

b. Change of Form of Performance Guarantee.

(i) If, after the Effective Date of this Settlement Agreement, Respondents desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 102.b.(ii) of this Settlement Agreement. Any decision made by EPA on a petition submitted under this subparagraph b.(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

(ii) Respondents shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Respondents shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Project Coordinator in accordance with Paragraph 31. EPA shall notify Respondents in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally

binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Project Coordinator within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Paragraph 31.

c. Release of Performance Guarantee. If Respondents receive written notice from EPA in accordance with Section XXXI hereof that the Work has been fully and finally completed in accordance with the terms of this Settlement Agreement, or if EPA otherwise so notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Respondents shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Respondents may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXVIII. INTEGRATION/APPENDICES

103. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the list of Respondents.

"Appendix B" is the SOW.

"Appendix C" is the map of the Site

"Appendix D" is the form of Trust Agreement

XXIX. ADMINISTRATIVE RECORD

104. Pursuant to CERCLA and the NCP, EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the Work upon which selection of the response action may be based. Consistent with Paragraph 51, upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Consistent with Paragraph 51, upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

105. This Settlement Agreement shall be effective on the date that a fully-executed copy of said Settlement Agreement is received by counsel for Respondents ("Effective Date").

106. This Settlement Agreement may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement. However, the EPA Project Coordinator and the Respondents' Designated Project Coordinator may by mutual agreement make minor modifications to the requirements of the RI/FS Work Plan, specifically modifications that do not materially or significantly affect the nature, scope, or timing of the work to be performed. Any such modifications must be in writing and signed by both Project Coordinators. The effective date of the modification shall be the date on which the letter from EPA's Project Coordinator is signed.

107. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified. EPA Project Coordinator may in writing extend any deadline under this Settlement Agreement.

XXXI. NOTICE OF COMPLETION OF WORK

108. EPA shall review the final deliverable of the RI/FS Work Plan and determine whether all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to, retention of records and payment of Future Response Costs. Upon such determination, EPA will provide written notice to Respondents. Such notice shall not be unreasonably withheld. If EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Failure by Respondents to correct such deficiencies shall be a violation of this Settlement Agreement.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: 5/1/08

GEORGE PAVLOU, DIRECTOR
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II